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IN THE

Supreme Court of the United States

October Term, 1969

No. 537

TRANSAMERICAN FREIGHT LINES, INC.
and RALPH CARBONE,
Petitioners,

against

THE PEOPLE OF THE STATE OF NEW YORK,
on complaint of Officer JOHN GILLES,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of the State of New York

RESPONDENT'S BRIEF IN OPPOSITION

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Preliminary Statement

The petitioners were charged in the Criminal Court of the City of New York with violation of §380, subdivision 3 of the New York Vehicle and Traffic Law by the complaining police officer in that it was alleged that they engaged in the transportation of 10,038 pounds of ethylene oxide, a flammable liquid, on a public highway in New York, without conspicuously marking or placarding their vehicle to warn of the hazard.

The charges were made by the police officer after the tractor and trailer, owned by the corporate petitioner and operated by the individual petitioner, was intercepted on the toll plaza of the Holland Tunnel in New York City (R 12).* The Holland Tunnel is one of the Hudson River crossings connecting New York and New Jersey which is operated by The Port of New York Authority. The complaining police officer was a member of The Port of New York Authority Police stationed at the Holland Tunnel (R 11). The petitioners' tractor and trailer was intercepted on the New York plaza after the operator had paid the toll for passage through the tunnel (R. 12).

Since this case was set down for trial in a part of the Criminal Court of the City of New York, County of New York, where an Assistant District Attorney is not normally assigned, the Court requested the complaining police officer to secure Port Authority counsel to present the People's case. The General Counsel of the Port Authority assigned a Port Authority attorney to present the

* References are to page numbers of the record on appeal.

People's case, who appeared by permission of the Court (R 11). Following the trial, an attorney of the office of the General Counsel of the Port Authority presented the case on appeal to the Appellate Term of the Supreme Court of the State of New York and on appeal to the Court of Appeals of the State of New York and appears before this Court for the People of the State of New York in cooperation with the Office of the District Attorney, New York County. Although obviously interested in the enforcement of the statute, The Port of New York Authority is not a party to this action.

The legislative history of the statute under which the petitioners were prosecuted was enacted by the New York Legislature as a result of an explosion and fire in the Holland Tunnel on May 13, 1949 involving a vehicle owned by Boyce Motor Lines. Memorandum of New York Joint Legislative Committee on Interstate Cooperation dated March 24, 1951 to Governor Thomas E. Dewey from Senator Chauncey B. Hammond, Acting Chairman; *People* v. *Hardford Transp. Co.*, 6 Misc. 2d 562, 565, 165 N.Y.S. 2d 418, 421 (Magis. Ct. N.Y. Co. 1962). The demonstrated inadequacy of the existing legislation regulating the transportation of dangerous articles in New York State as of the time of the Holland Tunnel fire and explosion may be seen from *Boyce Motor Lines* v. *U. S.*, 342 U. S. 337. In *Boyce, supra,* the defendant was charged with violating regulations of the Interstate Commerce Commission. The evidence indicated that a large quantity of carbon bisulphide, a dangerous flammable liquid was being transported through the Holland Tunnel. While in the confines of the tunnel the flammable liquid exploded and

burned causing the death of one person and injury to about sixty and enormous property damage necessitating the closing of the tunnel for repairs for an extensive period.

In the case at Bar the petitioners were charged with failure to conspicuously mark or placard their vehicle to warn of the hazardous nature of the cargo. Had their truck not been intercepted and had it entered the tunnel, its presence would have violated the regulations restricting entry of such dangerous articles. *Rules and Regulations Governing the Transportation of Explosive and Other Dangerous Articles Via the Lincoln Tunnel, Holland Tunnel, etc. Section 6.6.*

The Opinions Below

The opinion of the Criminal Court of the City of New York, County of New York (Petition Appendix A, p. 3a), is reported at 54 Misc. 2d 762, 283 N.Y.S. 2d 468 (1967). The *per curiam* affirmance of the Supreme Court of the State of New York, Appellate Term, First Department (Petition Appendix A, p. 11a), is reported at 57 Misc. 2d 1089, 294 N.Y.S. 2d 156 (1968). The opinion of the Court of Appeals of the State of New York is reported at 24 N.Y. 2d 727, 249 N.E. 2d 880, 302 N.Y.S. 2d 257 (1969). (Petition Appendix A, p. 15a).

Jursidiction

The jurisdictional requisites are adequately set forth in the Petition.

Questions Presented

1. Is Section 380 of the New York Vehicle and Traffic Law unconstitutional as conflicting with federal legislation where the New York statute and the federal law each require motor vehicles bearing flammable liquids to be placarded to indicate the hazardous nature of the commodity carried and where compliance with the federal law, *per se*, constitutes compliance with the State law?

2. Has Congress preempted the field of regulations over the transportation of dangerous articles by motor vehicle where federal legislation designed to regulate this field fails to evidence an intention to foreclose the States from exercising their police power to protect the health, safety and welfare of its inhabitants?

3. Do questions of the weight and sufficiency of the evidence in a State criminal trial where the defendant has had an ample opportunity to be heard constitute constitutional questions involving the due process and equal protection clauses of the Fourteenth Amendment?

The New York Statute and Regulations, and Federal Regulations Involved

Vehicle and Traffic Law

§380. Motor vehicles engaged in the transportation of dangerous articles

1. Definitions. "Highway," as used in this section, shall mean and include any public street, alley, road, tunnel, bridge, viaduct, turnpike or parkway.

"Dangerous article," as used in this section, shall mean any flammable liquids

* * *

"Flammable liquids," as used in this section, shall mean any liquid which gives off flammable vapors (as determined by flash point from Tagliabue's open cup tester, as used for test of burning oils) at or below a temperature of eighty degrees Fahrenheit.

* * *

3. It shall be unlawful to transport by motor vehicle over the highways within this state any dangerous article without conspicuously marking or placarding any motor vehicle engaged in such transportation on each side and on the rear thereof with the word "dangerous" or the common or generic name of the substance transported or its principal hazard; provided, that the commissioner of motor vehicles may, by regulation issued after a public hearing, prescribe with respect to any specific dangerous article the minimum quantities below which no placard shall be required.

4. *Nothing in this section contained shall apply to transportation of any dangerous article* by rail or by water; nor to transportation of any dangerous article *by highway when packed, marked, labeled or accompanied by shipping papers in conformity with the applicable regulations of the interstate commerce commission and placarded in conformity with the provisions of subdivision three* of this section; nor to the regular military or naval forces of the United States, nor to the duly authorized militia of any state or territory thereof, nor to the police or fire depart-

ments of this state, or of its counties, cities, towns, villages, agencies or instrumentalities, providing the same are acting within their official capacity and in the performance of their duties (*italics supplied*).

Official Compilation Codes Rules and Regulations of the State of New York
Title 15 Department of Motor Vehicles
Part 67
Dangerous Articles

SECTION 67.1 *Introduction.* Section 380 of the Vehicle and Traffic Law relates to the transportation of dangerous articles by motor vehicle. Under the provisions of such section it is unlawful to transport by motor vehicle over the highways of this state any dangerous article in such manner or condition as will unreasonably endanger the person or property of others. Subdivision 3 of such section provides for the conspicuous marking or placarding of any motor vehicle engaged in such transportation, but authorizes the Commissioner of Motor Vehicles to establish minimum quantities of any specific dangerous article below which no placard shall be required.

67.2 *Definitions.* (a) The term *dangerous article,* as used herein, means any flammable liquids, flammable solids, oxidizing materials, corrosive liquids, compressed gases, poisonous substances and radioactive materials, as hereinafter defined, when transported as cargo by motor vehicle on a public highway.

(b) The term *flammable liquids,* as used herein means any liquid which gives off flammable vapors (as determined

by flash point from Tagliabue's open cup tester, as used for test of burning oils) at or below a temperature of 80 degrees Fahrenheit.

* * *

67.3 *Method of placarding.* (a) Motor vehicles required to be placarded shall be marked or placarded on each side and the rear thereof with a placard or lettering, in letters not less than three inches high on a contrasting background, optionally as follows:

(1) With the word "DANGEROUS", or

(2) with the common or generic names of the dangerous article being transported, or

(3) with words describing the principal hazard.

* * *

67.6 *Exemptions.* (a) Motor vehicles engaged in the transportation of dangerous articles, need not be marked or placarded in the manner provided by subdivision 3 of section 380 of the Vehicle and Traffic Law, when transporting:

(1) Less than 2,500 pounds of one group, or 5,000 pounds of two or more such groups, of

(i) flammable liquids;

* * *

(b) *This regulation does not apply to:*

* * *

(4) Transportation of any dangerous article by highway when packed, marked, labelled, or accompanied by shipping papers in conformity with the applicable regulations of the Interstate Commerce Commission and prop-

erly placarded, or when exempt from specification packaging, marking, labelling and placarding requirements under such regulations;

* * *

Code of Federal Regulations

Title 49—Chapter I

§72.5 List of explosives and other dangerous articles.

(a) For explanation of signs and abbreviations see §72.4.

Article: Ethylene oxide.

Classed as: F. L.*

Exemptions and packing (see sec.): No exemptions, 72.124

Label required if not exempt: Red

Maximum quantity in 1 outside container by rail express: 30 pounds in cylinders, 16 pounds in other containers.

* * *

§73.115 Flammable liquids; definitions.

(a) A flammable liquid for the purpose of Parts 71-79 of this chapter is any liquid which gives off flammable vapors (as determined by flash point from Tagliabue's open-cup tester, as used for test of burning oils) at or below a temperature of 80° F.

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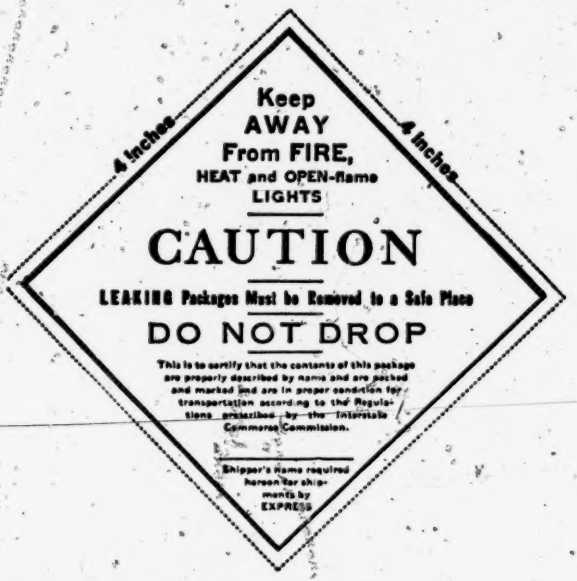
* Abbreviation for flammable liquid, 49 C.F.R. §72.4.

§73.405 Flammable liquids label.

(a) Labels for flammable liquids must be of diamond shape, bright red in color, and with each side 4 inches long. Printing must be in black letters inside of a black-line border measuring 3½ inches on each side and as shown in this section.

RED LABEL FOR FLAMMABLE LIQUIDS
(Reduced size—Black printing on red)


4 inches
4 inches
Keep
AWAY
From FIRE,
HEAT and OPEN-flame
LIGHTS
CAUTION
LEAKING Packages Must be Removed to a Safe Place
DO NOT DROP
This is to certify that the contents of this package are properly described by name and are packed and marked and are in proper condition for transportation according to the Regulations prescribed by the Interstate Commerce Commission.
Shipper's name required hereon for shipments by EXPRESS

§77.810 Vehicular tunnels.

(a) Nothing contained in Parts 71-79 of this chapter shall be so construed as to nullify or supersede regulations established and published under authority of State statute or municipal ordinance regarding the kind, character, or quantity of any explosive or other dangerous article permitted by such regulations to be transported through any urban vehicular tunnel used for mass transportation.

• • •

§77.817 Shipping papers.

(a) Every motor carrier operating a motor vehicle transporting explosives or other dangerous articles shall require the driver of the vehicle to have in his possession, and the driver shall keep in his possession during the course of such transportation, a manifest, memorandum receipt, bill of lading, shipping order, shipping paper, or other memorandum setting forth the following information for each class of such article being transported: The shipping name, the total quantity by weight, volume, or otherwise as appropriate of each kind of explosive or other dangerous article and the prescribed label when required for the outside container of such article.

* * *

Section 77.823 Marking on motor vehicles and trailers.

(a) Every motor vehicle transporting * * * 2500 pounds gross weight or more of * * * flammable liquids * * * or 5000 pounds gross weight or more of two or more articles of these groups shall be marked or placarded on each side and rear * * *.

* * *

Statement

The petitioners Transamerican Freight Lines, Inc. and Ralph Carbone seek review of convictions for violation of Section 380, Subsection 3 of the New York Vehicle and Traffic Law. The corporate petitioner was sentenced to a fine of $500, the minimum prescribed by law for a second offense, and the individual petitioner was sentenced to a

fine of $50. Vehicle and Traffic Law, Section 380, par. 5 (R 42, 44).

The complainant, Police Officer John Gillies, Port Authority Police, Holland Tunnel, testified that on the morning in question he observed a vehicle on the New York plaza of the Holland Tunnel, passing through a toll lane at the entrance to the Holland Tunnel (R 12). Officer Gillies stopped the vehicle and obtained from the operator, the individual petitioner, the shipping documents in his possession (R 12, 13). After examining the shipping papers and comparing the contents of petitioners' bill of lading with a list of dangerous articles located nearby, Officer Gillies opened the truck for a physical inspection of the cargo (R 13, 14). Subsequently, a bill of lading, one of the shipping documents, was copied. The bill of lading bearing petitioner Transamerican Freight Lines' name specified that included in the cargo were 15 drums of ethylene oxide with a weight of 10,038 pounds. The copy of the bill of lading was received in evidence as People's Exhibit 3 (R 17).

The police officer entered the body of the truck, an enclosed tractor-trailer with a box-shaped body (R 13), and after removing some of the other cargo, observed fifteen 50 gallon drums (R 14). Officer Gillies stated he observed red labels on the drums and tags affixed to these drums (R 15). The red labels were the type prescribed by ICC regulations for flammable liquids (R 15). A facsimile of one of these labels was received in evidence as People's Exhibit 1 (R 15). The tags affixed to the drums bore a legend stating: "ethylene oxide, 99% pure" (R 15). One

of these tags was removed from a drum and received in evidence as People's Exhibit 2 (R 16). Officer Gillies observed that absent from all four sides of the truck was any sign or legend indicating that the truck contained dangerous cargo or the nature of the cargo (R 16). The truck and its load were photographed by a police photographer. The photograph, received in evidence as People's Exhibit 4, depicts the load of the truck (R 17). Because of the position of the other cargo only seven of the fifteen drums were visible on the exhibit (R 18). Photographs marked People's Exhibits 5A, B and C in evidence indicate the absence of any placards from the sides of the truck (R 18). The driver of the truck was issued a summons and thereafter placards were affixed to the truck and the driver released (R 18). Subsequently, a summons was issued against the corporate petitioner (R 18, 19).

It was conceded that no sample of the material contained in the drums was obtained and the evidence concerning the contents of the drums was wholly circumstantial.

A chemist, the Chief of Chemical Testing for the Port Authority, who was qualified as an expert (R 24), testified that according to the definition of flammable liquids contained in Section 380 of the Vehicle and Traffic Law, the material ethylene oxide has a flash point of minus 4 degrees Fahrenheit (R 22, 24). The temperature below which materials are defined as flammable is 80 degrees Fahrenheit. The minus 4 degrees Fahrenheit flammability of ethylene oxide is therefore 84 degrees *below the statutory minimum.*

The chemist further testified that this substance boils and becomes a gas when exposed to the atmosphere at a temperature of 51 degrees Fahrenheit or greater (R 24). When then mixed with as little as 3% air, the vapors become explosive and further are toxic and therefore harmful to human beings (R 25, 26).

At the conclusion of the People's case, the petitioners moved to dismiss on the grounds that the People had failed to make out a prima facie case. This motion was denied (R 29). Thereafter petitioners rested and moved to dismiss based upon a claim that the People had failed to prove their case beyond a reasonable doubt and further based upon an assertion that the statute was unconstitutional as invading a sphere preempted by the federal government. This motion similarly was denied and petitioners were found guilty as charged. On appeal to the Appellate Term of the Supreme Court of the State of New York and to the New York Court of Appeals, petitioners' claims of unconstitutionality were also asserted and rejected without dissent. Also rejected by the trial judge was a claim that proof of criminal intent was required for conviction under the statute. (Petition, Appendix A, pp. 4a, 5a.) The Court of Appeals in passing on this point agreed but added that the record would sustain a conviction under the similar federal statute which requires *scienter* (Petition, Appendix A, p. 17a).

Argument

The New York statute which requires motor carriers transporting dangerous articles in the State to placard their vehicles to warn of the hazard imposes no greater burden than does the federal law concerning the same subject matter and, therefore, may not be said to constitute conflicting legislation. Coincidence of the state requirement is not repugnant to the federal law and attaching penal sanctions for violation of state regulations substantially identical to the federal regulations does not create a conflict. Congress has not preempted the field of regulation over motor carriers engaged in the transportation of dangerous articles since there is no such indication in the federal legislation or regulations promulgated by the federal agency whose responsibility it is to administer, execute and enforce the federal law.

Questions of the weight and sufficiency of the prosecution's evidence in a state criminal prosecution in which the petitioners had an ample opportunity to be heard present neither due process nor equal protection questions.

The state court decided all pertinent constitutional questions in the instant case in accordance with the principles previously enunciated by this Court.

I

The statute is a valid exercise of the police power of the State of New York not in conflict with nor preempted by federal legislation.

Petitioners assert that Congress has preempted the field of regulation of transportation of dangerous articles as applied to interstate shipments. The legislative history, to the contrary, has clearly indicated a lack of Congressional intent to preempt the field. See 2 U.S. Code & Admin. News, 86th Cong. 2nd Sess., 3369, 3372 (1960); 18 U.S.C. §835(a); 49 C.F.R. §77.810.

What is dispositive is that the state statute and regulations in *no way* conflicts with the ICC regulations, but rather complements the federal regulation. *California* v. *Zook,* 336 U.S. 725.

The State and ICC regulations here each requires warning placards to be placed on trucks bearing 2500 pounds or more of flammable liquids. 49 C.F.R. §77.823. Had there been compliance with the ICC regulation, there could be no violation of the State regulation. That the State also chooses to impose penal sanctions for conduct prohibited by the federal regulation does not present conflicting but rather complementary local action. This type of complementary state penal provision in comity with a federal regulation, was upheld in *California* v. *Zook, supra,* relied upon by the courts below (Petition, Appendix A, pp. 7a, 18a). There this Court was faced with the question of whether a California statute prohibiting the sale of trans-

portation over the highways of the state without a permit was unconstitutional. The Federal Motor Carrier Act, administered by the ICC, had a substantially identical provision for interstate transportation.

In the *Zook* case, this Court noted that defendants sought to advance a rule "* * * that when Congress has made specified activity unlawful, 'coincidence is as ineffective as opposition,' and state laws 'aiding' enforcement are invalid." 336 U.S. at 729.

In reply this Court stated that:

> "* * * if the claim is conflict in terms, it 'must be clear that the federal provisions are inconsistent with those of the state to justify the thwarting of state regulation.'" 336 U.S. at 733.

In concluding, this Court stated:

> "* * * the State may punish as it has in the present case for the safety and welfare of its inhabitants; the nation may punish for the safety and welfare of interstate commerce. There is no conflict." 336 U.S. at 738.

The regulations authorized by the statute and promulgated by the New York Commissioner of Motor Vehicles exempt from the requirement of this statute "Transportation of any dangerous article by highway when packed, marked, labelled, or accompanied by shipping papers in conformity with the applicable regulations of the Interstate Commerce Commission and properly placarded, or when exempt from specification packaging, marking, labelling and placarding requirements under such regulations";

15 NYCRR, §67.6(b)(4). This reinforces the result that compatibility, not conflict, exists between the federal and state regulations.

The lack of preemption in this field is demonstrated by *Maurer* v. *Hamilton,* 309 U.S. 598, and *South Carolina State Highway Dept.* v. *Barnwell Bros.,* 303 U.S. 177 relied on by the New York Court of Appeals (Petition, Appendix A, p. 17a). In *Maurer,* a Pennsylvania statute prohibited operation of a truck carrying any other motor vehicle over the head of the driver. An otherwise comprehensive scheme of ICC regulation contains no such prohibition. In *Maurer* this Court stated:

> "* * * Congressional intention to displace local laws in the exercise of its commerce power is not, in general, to be inferred unless clearly indicated by those considerations which are persuasive of the statutory purpose. This is especially the case when public safety and health are concerned." 309 U.S. at 614.

Here there is no evidence that the federal regulations were intended to displace all state regulation of the subject. 2 U.S. Code & Adm. News, 86th Cong. 1960, 2nd Sess., 3369, 3372; *California* v. *Zook, supra.* In *South Carolina State Highway Dept.* v. *Barnwell Bros., supra,* a South Carolina statute excluded from the highways vehicles exceeding certain widths and heights. The ICC, an intervenor in the case, had promulgated no such regulation. Here, this Court, after reviewing numerous cases sustaining state regulation of highways, stated:

> "In each of these cases regulation involves a burden on interstate commerce. But so long as the state action does not discriminate, the burden is one which

the Constitution permits because it is an inseparable incident of the exercise of a legislative authority, which, under the Constitution, has been left to the states." 303 U.S. at 189.

In support of their contention that Congress has preempted the field of regulation of the transportation of dangerous articles, petitioners quote from *Castle* v. *Hayes Freight Lines, Inc.*, 348 U. S. 61 and *Charleston & W.C.R. Co.* v. *Varnville Furniture Co.*, 237 U.S. 597 (Petition, p. 11). However, it is apparent that this Court in subsequent decisions has severely limited the implications of the foregoing cases. In *Colorado Anti-Discrim. Com'n* v. *Continental Airlines*, 372 U.S. 714, 722 this Court examined the language quoted by petitioners from *Charleston, supra*, in light of the *Zook* case, *supra*. In *Colorado*, this Court passed on the defendant's argument that:

> "* * * 'When Congress has taken the particular subject-matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go.'

In reply this Court stated:

> "But this Court has also said that the mere 'fact of identity does not mean the automatic invalidity of state measures.'* To hold that a state statute identical in purpose with a federal statute is invalid under the Supremacy Clause, we must be able to conclude that the purpose of the federal statute would to some extent be frustrated by the state statute. We can reach no such conclusion here."

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* *California* v. *Zook*, 336 U.S. 725, 730.

Petitioners, in citing *Castle* v. *Hayes, Inc., supra,* themselves point out the entirely distinguishing feature of the case—the state there had sought to suspend the operating rights of a federally licensed interstate carrier for failure to comply with state regulation (Petition, p. 11). No such action has been threatened in the case at Bar. Furthermore in *Florida Lime and Avocado Growers, Inc.* v. *Paul,* 373 U. S. 132, 142, 143 this Court indicated the limits on *Castle* v. *Hayes, supra,* and in so doing stated:

> "* * * First, it is suggested that a federal license or certificate of compliance with minimum federal standards immunizes the licensed commerce from inconsistent or more demanding state regulations. While this suggestion draws some support from decisions which have invalidated direct state interference with the activities of interstate *carriers,* Castle v. Hayes Freight Lines, Inc., 348 U. S. 61, 75 S.Ct. 191, 99 L.Ed. 68, even in that field of paramount federal concern the suggestion has been significantly qualified, e.g., Huron Portland Cement Co. v. Detroit, 362 U.S. 440, 447-48, 80 S.Ct. 813, 818, 4 L.Ed. 2d 852; * * *"

This Court then went on:

> "The test of whether both federal and state regulations may operate, or the state regulation must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives.
>
> "The principle to be derived from our decisions is that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no

other conclusion, or that the Congress has unmistakably so ordained. See, e.g., Huron Portland Cement Co. v. Detroit, supra."

In *South Carolina State Highway Dept.* v. *Barnwell Bros.*, 303 U.S. 177, *supra*, and *Maurer* v. *Hamilton*, 309 U.S. 598, *supra*, state statutes regulating the use of the highways were under attack as an interference with interstate commerce, and in each case this Court sustained the state statutes although interstate commerce was concededly affected.

It has long been clear that not all state action that affects interstate commerce is unconstitutional, *e.g.*, *Cooley* v. *Board of Wardens*, 12 How. (53 U.S.) 299. Local regulation which does not discriminate against interstate commerce and which effectuates a local public interest is valid. Here the petitioners may not complain that they are required to comply with regulations applicable to all users of New York's highways. The mere entry of state regulation into a field covered by federal regulation is not enough to invalidate local law. Exclusive occupation of a sphere of regulation is not to be implied, "* * * unless the Act of Congress fairly interpreted is in actual conflict with the law of the State." *Huron Portland Cement Co.* v. *City of Detroit, Michigan*, 362 U.S. 440, 443. In *Huron, supra*, this Court further stated:

> "In determining whether the state has imposed an undue burden on interstate commerce, it must be borne in mind that the Constitution when 'conferring upon Congress the regulation of commerce, * * * never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their

citizens, though the legislation might indirectly affect the commerce of the country.'" *Id.* at 443, 444.

Accordingly, it is quite clear that the New York Courts in rejecting petitioners' claim of unconstitutionality were acting in accord with binding precedents established by this Court clearly applicable to the instant case. The granting of certiorari in this case is therefore clearly unwarranted.

II

Petitioners' assertion of a denial of due process and a deprivation of equal protection of the law is specious.

Although the petitioners assert claims of a denial of due process and a deprivation of equal protection of the laws, no authorities have been cited that will substantiate these claims and therefore appear to have been asserted merely to convert this case into one warranting review by this Court on certiorari. So far as petitioners' claim regarding the sufficiency of the People's evidence, the case at Bar may not be considered as even approaching the prerequisites for a due process argument as set forth by this Court in *Thompson* v. *Louisville*, 362 U.S. 199, where it was held that the absence of *any* evidence to support a conviction is a denial of due process. Petitioners' arguments solely concern the weight and sufficiency of the People's evidence which are neither due process nor equal protection questions. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61; *Jones* v. *Buffalo Creek Coal & Coke Co.*, 245 U.S. 328.

Nor may petitioners successfully assert that the claimed absence of any proof of *scienter* in the People's case equates to a due process deficiency. *Shelvin-Carpenter Company* v. *Minnesota,* 218 U.S. 57; *United States* v. *Balint,* 258 U.S. 250; *United States* v. *Behrman,* 258 U.S. 280; *St. Johnsbury Trucking Co.* v. *United States,* 220 F.2d 393, 398 (1st Cir. 1955).

Petitioners' claim of a denial of equal protection of the laws as a result of the enforcement of a statute of general application is illusory. *Barbier* v. *Connolly,* 113 U.S. 27. In *Barbier* this Court stated that this constitutional provision was not:

> "* * * designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people * * *.
>
> Special burdens are often necessary for general benefits—for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon anyone, but to promote, with as little individual inconvenience as possible, the general good." 113 U.S. at 31, 32.

The spurious interjection of Fourteenth Amendment claims into the present case does not convert a correct decision of state law into an important question of federal law.

Conclusion

For the foregoing reasons, it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted,

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